IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.36 OF 1989

Smt.Dhanvidya A. Dalal .. Applicant.
V/s.
The C.I.T. Bombay City-VIII .. Respondent.

Mr.K.B. Bhujle for the applicant.

Mr.Ashok Kotangale for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 1ST AUGUST, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. At the instance of the applicant-assessee, the I.T.A.T. has referred the following questions of law for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 (for short 'the said Act').

> 1. Whether on the facts and in the circumstances of the case, was the Tribunal justified in law in holding that on the basis of the interpretation of the will, the applicant had not established that the jewellery was not acquired by inheritance ?
>
> 2. Whether on the facts and in the circumstances of the case, was the Tribunal justified in law in holding that under Section 69A of the I.T. Act the tax is leviable on the value of jewelleries and ornaments for the assessment year 1984-85 although the said jewelleries and ornaments were assessed to tax under the Wealth-tax Act, 1957 for the assessment years 1980-81 to 1983-84 ?

2. The assessment year involved herein is assessment year 1984-85.

3. On 5th July, 1983 there was a search action under Section 132 of the Act at the residential premises of the assessee. During the course of search, the authorised officer found cash of Rs.20,000/- and jewellery valued as on that date at Rs.1,65,670/- in a locker. The authorised officer took possession of the cash and the jewellery after leaving certain jewellery worth Rs.27,000/- approximately.

4. On 29th August, 1983, the Income Tax Officer passed an order under Section 132(5) of the Act rejecting the explanation of the assessee that the jewellery found during the course of search was from the estate of her father and accordingly made addition of Rs.1,65,000/- as unexplained investments in jewellery.

5. Being aggrieved by the aforesaid order, the assessee filed an appeal under Section 132 (11) of the Act but the same was dismissed by the C.I.T. on 28th November, 1984.

6. In the light of the aforesaid orders, the Assessing Officer completed the assessment for A.Y. 1984-85 by making additions of Rs.1,65,000/- as unexplained investments in jewellery.

7. Being aggrieved by the aforesaid order, the assessee filed an appeal before C.I.T. (A). The said appeal was dismissed by the C.I.T. (A) on 2nd December, 1985. Further appeal filed by the assessee was also dismissed by the Tribunal on 13th November, 1987 insofar as it pertains to the additions of Rs.1,65,000/- is concerned. On a reference application filed by the assessee, the Tribunal has referred aforesaid questions for the opinion of this Court.

8. Mr.Bhujle, learned counsel appearing on behalf of the assessee submitted that the Tribunal was in error in confirming the addition of the value of the jewellery as unexplained investment under Section 69-A of the Act. He submitted that although the said jewellery was not set out in the will executed by the assessee's father, the assessee had established that the jewellery was inherited from her father in the year 1928. He submitted that in the year 1928 the assessee was a minor and, therefore, the father of the assessee had kept the jewellery with Smt.Asrumati Bogilal Dalal being given to the assessee and her sister at the time of their marriage. He submitted that the two daughters namely the assessee and her sister got married in the year 1945 and 1947 respectively. However, due

to certain differences, the jewellery was not handed over to the assessee at the time of her marriage, but the same were ultimately handed to the assessee in the year 1980.

9. Mr.Bhujle further submitted that the fact that the prosecution proceedings have been initiated against the assessee for not disclosing the inherited jewellery in the wealth tax assessments clearly shows that the jewellery in question is inherited property. In any event, the assessee, though belatedly, has disclosed the inherited jewellery in her wealth tax returns for A.Y. 1975-76 to A.Y. 1983-84 and the same have been accepted by the revenue. In these circumstances, Mr.Bhujale submitted that the jewellery belonging to the assessee could not treated as unexplained investment made by the assessee.

10. Mr.Bhujale referred to Board's Instruction No.1494 dated 23rd November, 1982, wherein it is stated that possession of jewellery worth Rs.1,00,000/- should be presumed normally belonging to a lady. In the present case, the jewellery belonging to the assessee has been valued at Rs.1,65,000/-. Therefore, in the light of above circular, the Tribunal ought not to have held that the jewellery belonging to the assessee was

unexplained investment.

11. Relying upon the judgment of the Apex Court in the case of CIT V/s. Smt.P.K. Noorjahan reported in 237 I.T.R. 570, Mr.Bhujale submitted that even if the explanation given by the assessee was not acceptable, it was obligatory on the part of the authorities below to find out as to whether the assessee had any source of income from which the investment in jewellery could be made. In the absence of such finding, the Tribunal ought not have held that the jewellery in question represented unexplained investments made by the assessee. Accordingly, Mr.Bhujale submitted that the questions referred to this Court be answered in favour of the assessee.

12. We do not find any merit in the arguments advanced on behalf of the assessee. According to the assessee, the jewellery in question have been inherited from her father. Admittedly, the father of the assessee who passed away in the year 1929 had made a will in the year 1928 for disposition of all the properties held by him and the said will has also been probated. The finding recorded by the C.I.T. (A) and confirmed by the Tribunal is that the will executed by the assessee’s father is exhaustive and contains list of all the assets held

by him. since the jewellery in question were not set out in the said will, the finding recorded by the Tribunal that the said jewellery were not inherited by the assessee from her father cannot be faulted.

13. The contention of the assessee that in the year 1928 father had deposited the jewellery with Ashrumati Dalal for being given to the assessee at the time of her marriage does not merit acceptance because, the assessee got married sometime in the year 1945 and admittedly no jewellery was given by Mrs.Dalal to the assessee at the time of her marriage. The contention that there was some dispute and ultimately Mrs.Dalal handed over the jewellery to the assessee sometime in the year 1980 is also unbelievable because the assessee has not disclosed the type of dispute which existed for nearly 40 years and the assessee has not disclosed the circumstances in which the jewellery was allegedly received by her in the year 1980.

14. The fact that the assessee has disclosed that the jewellery in question has been inherited from her father in the wealth tax assessments in A.Y. 1975-76 to A.Y. 1983-84 makes no difference to the facts of the present case, because, firstly, till the date of search carried on 5-7-1983, the

jewellery in question were neither disclosed by the assessee in the income tax proceedings nor in the wealth tax proceedings. Secondly, it is only after the search and seizure of the jewellery in the year 1983 and during the pendency of the proceedings, the assessee voluntarily filed wealth tax return for A.Y. 1975-76 to A.Y. 1983-84 disclosing the said jewellery as inherited from her father. Mere acceptance of the said returns without any investigation would not preclude the Assessing Officer to tax the jewellery on being found that the said jewellery constituted unexplained investments.

15. Reliance was placed by the assessee on the decision of the Apex Court in the case of Smt.P.K. Noorjahan (supra). In our opinion, the said decision has no bearing on the facts of the present case because, the assessee who is admittedly assessed to wealth tax cannot be said to have no source to acquire the jewellery. Similarly, the circular dated 23rd November, 1982 issued by the Board does not support the case of the assessee, because the said circular is issued for the purposes of seizing the jewellery during the course of search. The said circular has no application to the facts of the present case because, firstly, the value of the jewellery seized is more than Rs.1,00,000/- and secondly, the said circular cannot

be construed to mean that a lady can possess jewellery worth Rs.1,00,000/- out of unexplained investments.

16. In the result, we do not find any infirmity in the concurrent finding of facts recorded by the C.I.T. (A) and the Tribunal.

17. Accordingly, both the questions referred to us are answered in the affirmative i.e. in favour of the revenue and against the assessee.

18. The reference is disposed of in above terms with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)